

FILED

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Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

WILLIAM CODY, and others
similarly situated,

CIV. 08-4024

Plaintiff,

vs.

DOUGLAS WEBER; D. BIEBER;
S. BODDECKER; RODNEY BROCKHOFT;
MARY BURGGRAFF; GINA
BUTTERWORTH; KEITH DITMANSON;
LISA FRASER; E. IBRISEVIC; W. IRWIN;
ROBERT KUEMPER; PAUL KURLE;
TOM LINNEWEBER; DOUGLAS LOEN;
JOE MILLER; MICHELLE OAS; L. PERSON; *
TROY PONTO; TERRY REISNER;
C. RENAUDIN; B. SCHAEFER;
DARYL SLYKHUIS; OWEN SPURRELL;
GARY TAYLOR; G. VANVOORST;
BRAD WOODWARD; TIM REISCH;
and others unknown, in their official and
individual capacities,

OPINION AND ORDER

Defendants.

WILLIAM R. CODY,

CIV. 07-4110

Plaintiff,

vs.

DOUGLAS LOEN; DENNIS BLOCK;
S. BODDECKER; BARBARA BOLDT;
RODNEY BROCKHOFT; B. CONERS;
A. CRAMER; GLEN DEAN;
CLIFFORD FANTROY; LISA FRASEN;
LINDA MILLER-HUNOFF; CO IBRISEVIC; *
W. IRWIN; ROBERT KUEMPER;

PAUL KURLE; TOM LINNEWEBER; *
MR. PERSON; TROY PONTO; *
TERRY REISNER; CO RENAUDIN; *
B. SCHAEFER; DARYL SLYKHUIS; *
JULIE SPURRELL; OWEN SPURRELL; *
MR. STRAATMEYER; CPL. VANVOORST; *
REBECCA WEAVER; BRAD WOODWARD; *
DOUGLAS WEBER; TIM REISCH; *
all in their official and unofficial capacities; *

Defendants. *

* * * * *

Pending is Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction (Doc. 117). Plaintiff's request focuses on the number of photocopies allowed him by prison officials. Defendants appearing to-date oppose the motion (Docs. 121 and 122).

It is noted Plaintiff has previously sought the same relief in another case. *See Cody v. Slykhuis*, CIV. 04-4169 (Doc. 32)(DSD 2005). As in the previous case, no basis shown by Plaintiff would warrant a preliminary injunction. Under the four-part test in *Dataphase Systems, Inc. v. CL Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981) it is not shown that Plaintiff faces a threat of irreparable harm. Failure to prove irreparable harm is a sufficient reason to deny injunctive relief. *Adam-Mellang v. Apartment Search*, 96 F.3d 297, 299 (8th Cir. 1996). Moreover, "in the prison context, a request for injunctive relief must always be viewed with great caution because 'judicial restraint is especially called for in dealing with the complex and intractable problems of prison administration.'" *Goff v. Harper*, 60 F.3d 518, 520 (8th Cir. 1995)(quoting *Rogers v. Scurr*, 676 F.2d 1211, 1214 (8th Cir. 1982)).

Defendants also point out that on June 10, 2009, Plaintiff proposed that Defendants accept service electronically by the Court and not require a hard copy of documents Plaintiff files by mail. Defendants observe that they cannot change the prior court ruling, but that they would agree with that procedure. The local rules are in the process of amendment to allow for electronic service by

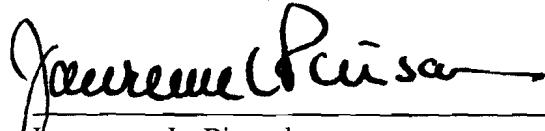
the Court of pro se filings. Accordingly, that practice will be followed from this point forward in this case. The initiation of this practice further obviates any basis for an injunction in this action, even though an injunction would not have been granted in any event for the reasons initially stated.

Accordingly, it is hereby

ORDERED that Plaintiff's Motion for Temporary Restraining Order and/or Preliminary Injunction (Doc. 117) is DENIED.

Dated this 17th day of November, 2009.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:

JOSEPH HAAS, Clerk

By Summer Wahrhaft
Deputy